

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

LITTLETON MILLWORK, INC.,  
Plaintiff

v.

CONCORD LUMBER CORPORATION d/b/a  
LITTLETON MILLWORK,  
Defendant

Civil Action No.:  
05CA12613-MEL

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Fed.R.Civ.P. 56, plaintiff, Littleton Millwork, Inc., hereby respectfully moves for partial summary judgment as to liability against defendant, Concord Lumber Corporation d/b/a Littleton Millwork, on its claims for declaratory judgment, trademark infringement, false designation of origin, false and misleading representation, false description, unfair competition, and unfair and/or deceptive acts or practices arising out of, among other things, defendant's infringement of plaintiff's LITTLETON MILLWORK mark and business name, in violation of the Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. §1051 *et seq.*) and state law (Counts I, IV, V and VI).<sup>1</sup>

In support of its motion, plaintiff respectfully refers this Court to its Memorandum of Law in Support of Plaintiff's Motion for Partial Summary Judgment<sup>2</sup> and its Local Rule 56.1 Statement of Undisputed Material Facts of Record filed herewith and incorporated herein by reference.<sup>3</sup>

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<sup>1</sup> On January 31, 2007, plaintiff filed a Motion for Leave to Amend Complaint, which motion is still pending as of the date of filing of this motion. Because the proposed Amended Complaint does not include any new claims, plaintiff's Motion for Partial Summary Judgment is not impacted by the allowance of its Motion for Leave to Amend Complaint. To the extent plaintiff's Motion for Leave to Amend Complaint is allowed, plaintiff's Motion for Partial Summary Judgment is to be treated as a motion for partial summary judgment as to liability only with regard to the claims asserted against defendant in Counts I, IV, V and VI of the Amended Complaint.

<sup>2</sup> On March 1, 2006, the parties filed a Joint Motion for Leave to File Briefs in Excess of Twenty Pages, which motion is still pending as of the date of the filing of this motion.

Respectfully Submitted,  
Plaintiff,  
LITTLETON MILLWORK, INC.,  
By its attorneys,

/s/ Maria E. Recalde

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Dated: March 5, 2007

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<sup>3</sup> For ease of reference, citations to the summary judgment record are to the Appendix of Exhibits Submitted in Support of Littleton Millwork, Inc.'s Motion for Partial Summary Judgment ("LMI's Appendix") to which the affidavits, pleadings, relevant deposition transcripts and exhibits, and other materials to which reference is made in the Local Rule 56.1 Statement of Undisputed Material Facts of Record are attached and incorporated by reference and which is being filed under sealed separately with the Court as it contains Confidential Information subject to the Stipulation and Confidentiality Order entered by the Court on May 9, 2006 in the above-captioned action.

CERTIFICATE OF SERVICE

I, Maria E. Recalde, hereby certify that the foregoing was served on Louis M. Ciavarra, lciavarra@bowditch.com, Bowditch & Dewey, LLP, 311 Main Street, P.O. Box 15156, Worcester, MA 01615-0156 and John W. Scruton, jscruton@stites.com, Stites & Harbison, PLLC, 400 West Market Street, Suite 1800, Louisville, KY 40202-3352, through Electronic Case Filing, this 5th day of March, 2007.

/s/ Maria E. Recalde

Maria E. Recalde